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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th January 2008

No. 912— li/1(B)-52/1999-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th January 2008, in Industrial Dispute Case No. 22 of 1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Orissa State Road Transport Corporation, Bhubaneswar and its workman represented through the State Transport Employees Federation, Orissa, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 22 OF 1999

Dated the 11th January 2008

Present :

Shri Srikanta Nayak, o. s. j. s. (Sr. Br.),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Orissa State Road Transport Corporation, Bhubaneswar.	..	First Party—Management
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And

Their Workman, represented through State Transport Employees Federation, Orissa, Cuttack.	..	Second Party—Workman
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Appearances :

For the First Party—Management	..	Shri D. Adhikari, Labour Welfare Officer.
For the Second Party—Workman	..	Shri M.C. Sahu, Authorised representative.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 7035—li/1 (B)-52/1999-L.E., dated the 24th May 1999.

“Whether the termination of services of Shri Kamala Kanta Nayak, Senior Assistant, Central Office, Orissa State Road Transport Corporation, Bhubaneswar with effect from the 31st December 1998 by way of compulsory retirement as alleged by the State Transport Employees Federation is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

2. The case of the second party (hereinafter referred to as the ‘workman’) is that he was working as a Senior Assistant with the first party-management till the 31st December 1998 when he was given compulsory retirement. The workman from the very beginning of his service elected as the Secretary of the Staff Committee of State Transport Service and thereafter as President of O. S. R. T. C. Employees Union, Balasore then Vice-President of State Transport Workers Union, Bhadrak and Working President of the State Transport Employees Federation. As office bearer of the Union he used to put forth the grievances of the workers before the management as a result of which it became enemical towards him.. When the management changed the age of retirement he raised industrial dispute and Industrial Disputes Case Nos. 45 of 1991 and 109 of 1997 are pending and he also filed a writ bearing O. J. C. No. 17869 of 1998 against the management. The first party on the 7th December 1998 convened a Board meeting and in that meeting they constituted a Review Committee consisting of four members and the Chairman-cum-Managing Director of the O.S.R.T.C. was the Chairman of the Review Committee. Prior to that in the meeting, dated the 15th May 1997 the Review Committee constituted consisted of six members. In the Board meeting, dated the 7th December 1998 the Review Committee considered the cases of Class-III and Class-IV employees and the matter was placed in the Board meeting, dated the 30th December 1998. The Chairman-cum-Managing Director of the Corporation was also the Chairman of the Board meeting and he accepted the proposal of the meeting to compulsorily retire the workman from service in the interest of the public and accordingly his service was terminated with effect from the 31st December 1998 by way of compulsory retirement. Due to his union activities he was dismissed twice but again he was reinstated. No adverse entry is communicated to him and he was also allowed to cross the Efficiency Bar. The retirement order does not indicate the reason nor it shows that the management verified his ten years C. C. Rs. The constitution of Review Committee is illegal because no 14 days notice was issued to the Board members. The action of the management is illegal. So, he raised an

industrial dispute and on failure of conciliation the matter was referred to this Tribunal for adjudication.

3. The case of the first party (hereinafter referred to as the 'management') is that the workman was not at all sincere and in the Board meeting , dated the 7th December 1998 the conduct of 774 employees were reviewed and they were given compulsory retirement and on the 30th December 1998 the said proposal was accepted by the Board and the services of the workman along with others were terminated. The workman was dismissed twice and he was also involved in a Vigilance case. No notice was required for convening the meeting as the members themselves decided the date of the next meeting. The action of the management is legal.

4. On the aforesaid pleadings of the parties, the following issue was framed :—

ISSUE

(i) "Whether the termination of services of Shri Kamala Kanta Nayak, Senior Assistant, Central Office, Orissa State Road Transport Corporation, Bhubaneswar with effect from the 31st December 1998 by way of compulsory retirement as alleged by the State Transport Employees Federation is legal and/or justified ? If not, what relief Shri Nayak is entitled to ?"

5. The workman examined one witness in support of his case and the first party management examined one witness in support of its case.

6. *Issue No. (i)*—W.W. No. 1 deposed that he first worked as a Junior Clerk in the Salandi Canal Division, Balasore till 1966 and thereafter he worked as an L. D. Clerk and after his retrenchment from that organisation he was appointed as an L. D. Assistant on the 25th June 1969 under the management and he was working as a Senior Assistant at the time of his termination of service. During his service career he was acting as an office bearer of the union and finally he became the Vice-President of the State Transport Employees Federation. As a member of the union he used to put forth the grievances of the workman before the management and for the said activities he was dismissed twice but again he was reinstated. In the Board meeting, dated the 15th May 1997 a Review Committee was constituted under the Chairmanship of the General Manager, O.S.R.T.C. but on the 7th December 1998 another Review Committee was constituted in which the Chairman, O.S.R.T.C. himself became the Chairman of the Review Committee. So, one person became the Chairman of both the Committee. No notice was served for the meeting, dated the 7th December 1998. So, the constitution of the Review Committee in that meeting is illegal. During his career the workman was suspended but the suspension was recalled. In the year 1993 he was placed under suspension vide Order No. 747 but he was released from suspension in the year 1996 and Ext. 6 is the said order. The Vigilance case which was instituted against him was ended in final report and Ext. 7 is the copy of the final report. He was allowed to cross the E. B. on the 1st April 1990 and Ext. 8 is the office order to that effect. On the 3rd December 1998 he had presented a memorandum to the management and thereafter keeping a grudge he was given compulsory retirement.

M. W. No. 1 deposed that on the 7th December 1998 there was a Board meeting which decided to retire 474 employees and Ext. A is the said Resolution of the Board and it was

decided to hold another meeting in the last week of December. On the 30th December 1998 another meeting was held and 474 employees including the present workman were retired from service and Ext. B is the said Resolution. The workman was retired on the ground of lack of integrity. The Review Committee placed its report and the said report was accepted after verification of the C. C. Rs. The C.C.Rs. of the workman although revealed his Trade Union activities but the same was ignored. The workman was reinstated twice due to political pressure. The workman was not a concerned workman.

7. The fact which is no more in dispute is that the workman is an employee of the management and he was given compulsory retirement. The conditions necessary to compulsorily retire an employee from service was dealt with by Their Lordships in a decision reported in 2001 (89) FLR (S.C.) Page 173 (*State of Gujarat Vs. Umedbhai M. Patel*), wherein Their Lordships held that “(i) whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest ; (ii) ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution ; (iii) for better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer ; (iv) any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order ; (v) even uncommunicated entries in the confidential record can also be taken into consideration ; (vi) the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable ; (vii) if the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer ; (viii) compulsory retirement shall not be imposed as a punitive measure.”

A perusal of the above decision reveals that prior to giving compulsory retirement the entire records of service career have to be verified. M. W. No. 1 deposed that after verifying the entire service records the workman was given compulsory retirement. Ext. D series are the copies of the confidential reports. A perusal of Ext. D series reveals that in every year the workman got an adverse entry and it is noted in the C.C.Rs. that he has no mind to work sincerely and he used to do very little work. in fact, Ext. D series reveal that the workman had not earned one single good C. C. R. It also reveals that the workman was placed under suspension twice and also dismissed twice from service. The fact that the workman was dismissed and suspended twice is also admitted by the W. W. No. 1. All these make it clear that the workman is not sincere and he was not discharging his duty sincerely. Ext. B, the copy of the Resolution reveals that after taking into account the entire service career the workman was given compulsory retirement.

8. It is contended that the Chairman of the Board and the Review Committee are one and the same person. So, the termination order is illegal one. It is not disputed that the Chairman-cum-Managing Director of the Corporation was the Chairman of the Board and also the Chairman of the Review Committee. But there is no material to hold that the Chairman had any personal enmity against the workman. Merely because the workman was an office bearer of the Union he was harassed by the Chairman does not stand to reason because the

present workman was not the only office bearer of the Union and there were other office bearers also. In the decision reported in 2006 (110) FLR (S.C.) Page. 492 (General Secretary, S.I.C.F. Workers Union Vrs. Managing Director), Their Lordships held that merely because the Enquiry Officer is an employee of the Management, it cannot lead to the assumption that he is bound to decide the case in favour of the management." Ext. A, the Resolution reveals that it was decided to reduce the manpower and not only the present workman but others were also given compulsory retirement. So, there is no material to hold that the workman was given compulsory retirement as a measure of punishment.

9. It is further contended that the Board meeting, dated the 7th December 1998 is invalid as 14 days notice was not issued to the members. Clause 6 of Ext. A reveals that the time of next meeting was fixed in the Resolution itself and M.W. No. 1 also deposed to that effect. No document was filed to show that 14 days notice was required to convene the meeting. Neither any member raised any objection to the meeting, dated the 7th December 1998. So, there is no material to hold that the meeting, dated the 7th December 1998 is invalid one. It is true that the workman was allowed to cross the E. B. in the year 1990 but thereafter also his working capacity did not increase as evident from the remarks made in the C. C. Rs. So, even that factor was considered to be in favour of the workman, the entire service career of the workman reveals that his work was not satisfactory. Therefore, there is no material to hold that the act of the management in giving compulsory retirement to the workman is illegal one. The reference is, therefore answered as below :

"The termination of services of the second party-workman Shri Kamala Kanta Nayak by way of compulsory retirement with effect from the 31st December 1998 is held to be legal as well as justified one and he is not entitled to any relief ?"

Dictated and corrected by me.

SRIKANTA NAYAK

11-1-2008

Presiding Officer

Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK

11-1-2008

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

P. MALLICK

Under-Secretary to Government